

REMARKS

Applicant requests reconsideration and reexamination of the above-identified application in view of the arguments and amendments made to the claims. The following remarks state Applicant's bases for making this request and are organized according to the Examiner's Action.

Claims Rejections - 35 U.S.C. § 112

The Examiner states that Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner states that it is unclear whether "a slot" recited in line 5 of Claim 2 is one of the "column of slots" set forth in lines 9 and 11 of Claim 1. Thus the metes and bounds of the claim cannot be ascertained since it is unclear whether an additional slot is being required in Claim 2.

Applicant is amending Claim 2 to recite "...said platform comprises a plurality of rows, each row comprises a first type of hole of said matrix of holes having a first diameter, a plurality of a second type of hole of said matrix of holes having a second diameter, and one slot of said columns of slots". Applicant believes that Claim 2 is now definite and patentable.

CLAIM REJECTIONS-35 U.S.C. § 102

The Examiner states that Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,379,315 (Broadwin '315). The Examiner states the Broadwin '315 discloses a platform comprising a top plate (2) disposed above a middle plate (6) which is disposed above a bottom plate (3); each of the plates (2, 6 and 3) comprises a matrix of holes (20, 32b and 22, respectively, as in Figure 1-3 rows from the left to middle of Figure 3) aligned with one another (see Figure 5); a column of slots (20- from the middle to the right in Figure 3) in the top plate and positioned adjacent to the matrix of holes in the top plate (2) and a column of slots (32a) in the middle plate (6) aligned with the slots (20) in the top plate (2).

Further, the Examiner states, with respect to Claim 2, a plurality of rows (see Figure 3 - one row extends from left to right in Figure 3, e.g. 4 rows are provided) is provided in the platform with each row (e.g., the row at the top of Figure 3) comprising a first type hole, a second type hole, and a slot; and with the respect to Claim 3, the slots in the top plate (2) are through slots (see Figure 5).

However, Applicant wishes to point out that Broadwin '315 does not disclose the slots 40<sub>1</sub>-40<sub>8</sub> in the top plate 12 of the present invention and does not disclose corresponding aligned slots 42<sub>1</sub>-42<sub>8</sub> in the middle plate 14. Webster's New World

Dictionary defines a "slot" as a narrow notch or groove; a slit for a coin. Broadwin '315 does not disclose a plurality of slots as shown in the top plate 12 and middle plate 14 of Figure 1 for the present invention. What the Examiner refers to as "slots 20" in Figure 3 are shown to be circular holes and the "slots 32a" are shown as circular holes. Broadwin '315 is a multi-tube storage/transport device having a top wall with holes 20 and a bottom wall of holes 22 to accommodate two sizes of tubes/vials. The present invention comprises slots 40<sub>1</sub>-40<sub>8</sub> in the top plate 12 and nonthrough slots 42<sub>1</sub>-42<sub>8</sub> in the middle plate 14 to receive gel-cards (not tubes or vials) for testing, which eliminate the need for a technologist to carry a second platform or workstation just for gel-cards. The platform 10 is used to do actual lab testing of patient samples and not just for the storage or transport of test tubes or vials. Therefore, because Broadwin '315 does not disclose the critical element of "slots" 40<sub>1</sub>-40<sub>8</sub> and 42<sub>1</sub> and 42<sub>8</sub> as shown and described in the present invention, Claims 1-3 (as amended) are not anticipated by Broadwin '315 and are believed to be patentable.

The Examiner states that Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,778,232 (McMorrow, Jr. '232). The Examiner further states that McMorrow, Jr. '232 discloses a platform comprising a top plate (27) disposed above a middle plate (25) which is disposed above a bottom plate (23); each of the plates (27, 25 and 23) comprises a matrix of holes (7 and 522 - half the rows from the

left to middle of Figure 1) aligned with one another (see Figure 2); a column of slots (7 - from the middle to right in Figure 1) in the top plate and positioned adjacent to the matrix of holes in the top plate (27) and a column of slots (7) in the middle plate (25) aligned with the slots (7) in the top plate (27); with respect to Claim 2, a plurality of rows (see Figure 1 - one row extends from left to right in Figure 1) is provided in the platform with each row (e.g., the row at the top of Figure 1) comprising a first type hole, a second type hole, and a slot; with respect to Claim 3, the slots in the top plate (27) are through slots (see Figure 2).

Applicant again wishes to point out that there are no "slots" shown or disclosed by McMorrow, Jr. '232 as shown and described in the present invention, but instead only holes such as 7 and 522. In the present patent application on page 9, line 21 to Page 10, line 3, it states "the slots 40<sub>1</sub>-40<sub>8</sub> in the top plate 12 of the illustrative embodiment (Figure 1 and Figure 2) measure 2mm x 72mm, extend completely through the middle plate 14 and are suitably sized for receiving a standard gel-card. The slots 42<sub>1</sub>-42<sub>8</sub> in the middle slot 14 are not cut completely through the middle plate 14 and measure 2mm x 72mm

with a depth of approximately 3mm. There is no element in the McMorrow, Jr. '232 patent that resembles slots 40<sub>1</sub>-40<sub>8</sub> and 42<sub>1</sub>-42<sub>8</sub> as shown and described in the present invention.

The Examiner states that with respect to the recitation in Claim 2, it is noted that the first type hole, second type hole and slot have not been compared to one another. Thus, even though all of the elements shown in Broadwin '315 and McMorrow, Jr. '232 are of the same size and shape, each has been defined to either be a first hole, second hole, or slot, as deemed necessary by the claim language.

However, although Applicant believes that Claim 1 is not anticipated by McMorrow, Jr. '232 nor by Broadwin '315, Applicant is amending dependent Claim 2 to more particularly specify a difference between the first type of holes 30<sub>1</sub>-30<sub>8</sub> and the second type of holes 34<sub>11</sub>-34<sub>89</sub> in the top plate which are not disclosed by McMorrow, Jr. '232 nor by Broadwin '315. The first type of holes 30<sub>1</sub>-30<sub>8</sub> have a first diameter which is defined in the Specification on page 8, line 22 as being 16mm, and the second type of holes 34<sub>11</sub>-34<sub>89</sub> are defined on page 9, line 4 as having a second diameter of 12.5mm. Neither McMorrow, Jr. '232 or Broadwin '315 show two different size holes and slots in the same plate (or plane). Therefore, Applicant believes that Claims 1-3 (as amended) are not anticipated by McMorrow, Jr. '232 and that Claims 1-3 are patentable.

CLAIM REJECTIONS-35 U.S.C. § 103

The Examiner states that Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broadwin '315. The Examiner states that Broadwin '315 discloses the platform as advanced above whereby the slots (32a) of the middle plate (6) are through slots of a different size than the slot (20) of the top plate (2). The claim differs from Broadwin '315 in requiring the slot of the middle plate to be a non-through slot. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the middle plate of Broadwin '315 such that the slots therein would be non-through slots, thereby increasing structural support of articles placed therein.

Applicant points out as argued above that the opening or hole 32a shown in Figure 3 is not a "slot" as defined in the present invention and Webster's New World Dictionary. Broadwin '315 teaches in column 2, lines 55-57 that "the support panel 6, which is immediate the top and bottom walls, is provided with a plurality of support openings 32a and 32b" (which are shown as circular holes). Further, in column 2, line 61, it states that "it will be understood that while the support means 30, 31, 32a and 32b are shown in the form of grooves and/or openings, it is within the purview of the present invention to utilize any other means and to interchange the grooves and openings shown in the drawing." However, in Broadwin's Figure

3, element 32a is a round hole passing through the middle plate and not an oblong groove or slot. In the present invention the slots 40<sub>1</sub>-40<sub>8</sub> are not for assembly, but are for holding gel-cards which are used in the actual testing of a patient's specimen. Because of the slot placement on the workstation 10, each slot aligns the gel-card with its corresponding patient specimen, which prevents the error of mismatching the test with the patient. Again, Broadwin '315 teaches a test tube rack for storage/transport of test tubes, and in the present invention, the workstation 10 is used for actual testing and the slots 40<sub>1</sub>-40<sub>8</sub> are there to accommodate the new technology of using gel-cards instead of test tubes. Therefore, Applicant believes that Claim 4 is not obvious from Broadwin '315 and further, Claim 4 is dependent on Claim 1, which is believed to be patentable, and likewise Claim 4 is patentable.

The Examiner states that Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMorrow, Jr. '232 alone. The Examiner states that McMorrow, Jr. '232 discloses the platform whereby with respect to Claim 5, the platform comprises spacers (29) for securing the top plate (27), the middle plate (25) and the bottom plate (23) together such that the spacers are inserted between the top plate (27) and the middle plate (25) and the middle plate and bottom plate (23); with respect to Claim 6, the platform comprises standoffs (29- between 21 and 23 in Figure 1). The Examiner states that the claims differ from McMorrow, Jr. '232 in requiring screws

screwed into the spacers (claim 5) and the standoffs (claim 6).

Although McMorrow, Jr. '232 does not disclose the use of screws, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the Examiner takes official notice) to have utilized screws in the platform of McMorrow, Jr. '232 for increased rigidity and stability of the platform.

However, Applicant believes that independent Claim 1 is patentable as described above, and Claims 5 and 6 are dependent on Claim 1 either directly or indirectly. Therefore, Applicant believes that Claims 5 and 6 are likewise patentable.

DOUBLE PATENTING - TERMINAL DISCLAIMER

The Examiner states that Claims 1-6 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over the claim of U.S. Design Patent No. D507,658 (Wescott, III '658), alone. Wescott, III '658 shows the features of the platform as claimed in the claims of this application except for the slot in the middle plate comprising a non-through slot (Claim 4). The Examiner states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the slot in the middle plate as a non-through hole, for increased support and stability of items placed in the slot of the top plate.

Applicant's Attorney has enclosed herein a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c) to overcome the rejection based on nonstatutory double patenting grounds. The present patent application and the cited U.S. Design Patent No. D507,658 are commonly owned by the Applicant/inventor Harvey M. Wescott, III. Therefore, Applicant believes that Claims 1-6 are now patentable.

In view of the above, it is submitted that Claims 1-6 as amended, are now in condition for allowance. Reconsideration of the rejections to the above claims is respectfully requested. Accordingly, it is requested that the foregoing amendment be entered and the case sent to issue.

If there are any questions, we urge the Examiner to call us. Please charge any costs in connection with this document to our Deposit Account No. 16-0875.

Respectfully Submitted,  
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